

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:)	ADMINISTRATIVE SETTLEMENT	
)	AGREEMENT	
Hardware & Tools for the World, Inc.,)		
)		
Respondent.)	AED/MSEB # 7261	
)		

This Administrative Settlement Agreement is made and entered into by and between the United States Environmental Protection Agency (EPA) and Hardware & Tools for the World, Inc., (Respondent or Hardware) regarding compliance by Respondent with the requirements of the Clean Air Act (Act) and the regulations promulgated thereunder at 40 C.F.R. Parts 89 & 90.

Purpose

1. The purpose of this Administrative Settlement Agreement (Agreement) is to resolve any and all claims by EPA under the Act and Parts 89 and 90 arising out of the importation of the unlabeled and/or uncertified engines identified in Appendices 1 and 2 herein (collectively referred to as "Subject Engines"), while ensuring that prior violations are identified and resolved, and future violations are avoided.

Statutory Authority

2. Sections 203(a) and 213(d) of the Act, 42 U.S.C. §7542, 7547, prohibit the sale, offering for sale, introduction or delivery for introduction into commerce, or the importation of any nonroad vehicle or engine unless such vehicle or engine is covered by a Certificate of Conformity issued and in effect.

Regulatory Authority

3. 40 C.F.R. § 90.1003(a)(1)(ii), applicable to new non-road spark ignition engines, prohibits any person from importing into the United States any non-road engine manufactured after the applicable effective date of the regulations, unless such engine is covered by a Certificate of Conformity.
4. 40 C.F.R. § 90.1003(a)(4)(ii), applicable to new non-road spark ignition engines, prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad engine manufactured after the applicable effective date of the regulations, unless a label is affixed to the engine in accordance with regulations under 40 C.F.R. § 90.114.
5. 40 C.F.R. § 90.3, applicable to new non-road spark ignition engines, defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or a person acting for, and under the control of such person.
6. 40 C.F.R. § 90.114, applicable to new non-road spark ignition engines, requires the original engine manufacturer to affix, at the time of manufacture of a certified engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.
7. 40 C.F.R. § 90.114(3), applicable to new non-road spark ignition engines, requires that the label be secured to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.
8. 40 C.F.R. § 89.1003(a)(1)(ii) prohibits any person from importing into the United States any new or in-use nonroad compression ignition engine manufactured after the applicable

effective date of the regulations, unless such engine is covered by a Certificate of Conformity.

9. 40 C.F.R. § 89.1003(a)(4)(ii), applicable to new or in-use non-road compression ignition engines, prohibits the sale, introduction, or delivery into commerce by an engine manufacturer of a nonroad engine manufactured after the applicable effective date of the regulations, unless a label is affixed to the engine in accordance with 40 C.F.R. § 89.110.
10. 40 C.F.R. § 89.2, applicable to new or in-use non-road compression ignition engines, defines an engine manufacturer as any person engaged in the manufacturing or assembling of new nonroad engines or importing such engines for resale, or a person acting for, and under the control of such person.
11. 40 C.F.R. § 89.110, applicable to new or in-use non-road compression ignition engines, requires the original engine manufacturer to affix, at the time of manufacture of a certified engine, a permanent and legible label identifying each nonroad engine. The label must be legible and readily visible to the average person after the engine is installed in the equipment.
12. 40 C.F.R. § 89.110(3), applicable to new or in-use non-road compression ignition engines, requires that the label be secured to an engine part necessary for normal engine operation and not normally requiring replacement during engine life.

Definitions:

13. For the purposes of this Agreement, the following definitions apply:
 - a. *This matter:* As used in this Agreement, “this matter” means Respondent’s importation of the Subject Engines and any civil liability that may apply to violations of the Act and implementing regulations at 40 C.F.R. Parts 89 and 90.

- b. *Certificate of Conformity*: A “Certificate of Conformity” means the document issued by EPA to a manufacturer under 40 C.F.R. § 89.105 and 40 C.F.R. § 90.106 after EPA determines that the manufacturer’s application is complete and that the engine family meets the requirements of Parts 89 and 90, respectively, and the Act. Issuance of the Certificate of Conformity permits production and introduction into commerce of engines built in accordance with the manufacturer’s application after the date of the Certificate and before expiration of the covered model year.
- c. *Certified engine*: The term “certified engine” means a spark-ignition or compression ignition nonroad engine built after the applicable dates of the regulations and that is covered by a Certificate of Conformity.
- d. *Uncertified engine*: The term “uncertified engine” means a spark-ignition or compression ignition nonroad engine built after the applicable dates of the regulations but which is not covered by a Certificate of Conformity issued by EPA.
- e. *Destroy*: The term “destroy” means the complete destruction of the engine and the complete disassembly of the equipment. The water jackets of the cylinder block and the head shall be impaled in multiple locations such that they can not thereafter be made to retain coolant regardless of whether repair is attempted and the equipment shall be crushed or disassembled and damaged in such a manner that it can never be reassembled.

- f. *Export*: The term “export” means to transport to a location outside of the United States and its territories, Canada, and Mexico.
- g. *Applicable regulation and dates*: The applicable regulations are 40 C.F.R. Part 89 and 40 C.F.R. Part 90, which are respectively applicable to compression-ignition nonroad engines of any capacity and spark-ignition nonroad engines at or below 19 kilowatts.

Background

- 14. On July 7, 2005, EPA inspectors conducted a directed inspection of Respondent’s warehouse. Upon inspection, EPA discovered 14 uncertified and unlabeled Kipor Power America and Fuan Sea Pump Enterprise Co., Ltd., engines, both stand alone and equipped in generators and pumps. (*See Appendix 1, Table 1*)
- 15. The 14 uncertified engines (two diesel powered engines subject to the requirements of 40 C.F.R. Part 89 and 12 gasoline powered engines with a rated power below 19 kilowatts and subject to the requirements of 40 C.F.R. Part 90) were manufactured after September 1, 1997 and were imported by Hardware into the United States (U.S.) at the Ports of Everglades and Miami.
- 16. Upon inspection, EPA discovered that none of the 14 varying Subject Engines carried an emissions control label or were covered under a Certificate of Conformity.
- 17. The 14 varying uncertified Subject Engines are currently located at Hardware’s warehouse.
- 18. In August of 2005, Hardware also imported and/or caused the importation of 520 mislabeled Zhejiang High Tech Enterprise Co., Ltd., (Zhejiang) engines into the United

States at the Miami Seaport, Miami, Florida. (See Appendix 1, Table 2) The 520 Zhejiang engines bore emissions labels for an engine family name that is not covered by the Certificate of Conformity issued to the manufacturer of the engines.

19. In addition, EPA determined that the emissions label attached to the 520 Zhejiang engines did not conform with the requirements of 40 C.F.R. § 90.114.
20. The 520 Subject Zhejiang Engines and equipment are currently seized by the U.S. Department of Homeland Security's Customs and Border Protection (Customs.)
21. On or about December 6, 2005, Hardware imported and/or caused the importation into the U.S. at the Port of Miami of 38 generators equipped with uncertified diesel powered Kipor engines which were allegedly imported solely for export but which were not properly labeled pursuant to 40 C.F.R. § 89.909(a). (See Appendix 1, Table 2) The equipment was not tagged or labeled indicating that they were solely for export. The 38 Subject Kipor Engines and equipment are currently seized by Customs.
22. On or about December 19, 2005, Hardware imported and/or caused the importation into the U.S., at the Port of Miami, of 132 generators equipped with Kipor diesel powered engines that were not properly labeled pursuant to 40 C.F.R. § 89.1003(a)(4)(ii). (See Appendix 1, Table 2) The emissions control labels were not affixed to the engine.
23. The 132 Subject Kipor Engines and equipment are currently seized by Customs.
24. As part of EPA's investigation to determine whether and to what extent Hardware had violated the Act, and the non-road engine regulations at 40 C.F.R. Parts 89 and 90, EPA requested information pursuant to Section 208(a) of the Act by letter dated November 21, 2005.

25. By letter dated February 3, 2006 Hardware provided information in response to EPA's information request. The February 3, 2006 letter, and its attachments, constituted Hardware's entire submittal/response to EPA's information request.
26. Upon review of Hardware's submittal, EPA determined that Hardware had previously imported into the United States 1,983 uncertified engines (*See Appendix 2*) in violation of the Act and the non-road engine regulations at 40 C.F.R. Parts 89 and 90. The 1,983 uncertified Subject Engines have been sold by Hardware and are currently in third party hands.

Terms of the Agreement

27. Respondent is the importer of record of all of the Subject Engines listed in Appendices 1 & 2.
28. Within 30 days from the date of this Agreement Hardware, or its authorized agent, shall export the Subject Engines listed in Table 1 of Appendix 1 to a country other than Canada or Mexico.
29. Within 30 days of their release from Customs seizure, Hardware, or its authorized agent, shall, under the direct supervision of Customs, export the Subject Engines listed in Table 2 of Appendix 1 to a country other than Canada or Mexico.
30. Within 30 days from the date of the exportation as provided in paragraphs 28 and 29 hereinabove, Respondent shall provide to EPA verification of exportation of the Subject Engines listed in Tables 1 & 2 of Appendix 1 to a country other than Canada or Mexico by way of U.S. Customs documentation.

31. Responses to Paragraphs 30 shall be sent to Jacqueline Robles Werner at the addresses provided in Paragraph 35 hereinbelow.
32. Respondent shall pay to the United States a civil penalty of seventy thousand dollars (\$70,000)(“EPA penalty”) in satisfaction of the violations described herein, provided Respondent successfully completes the terms of this Agreement.
33. Respondent agrees to pay the \$70,000 penalty to the United States of America within sixty (60) calendar days of the effective date of this Agreement (“penalty due date”), but not before the effective date. Late payment of the EPA penalty is subject to interest and fees as specified in 31 U.S.C. § 3717. Respondent agrees to pay the amount by either:
 - a. Certified check or cashier’s check payable to the “United States of America,” and mailed via United States Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7261

Simultaneously, a photocopy of the check shall be faxed to 202-564-0069 to the attention of Jacqueline Robles Werner. This check shall be identified with the case number and Respondent’s name; or

- b. Respondent may make an online payment through the Department of the Treasury by visiting WWW.PAY.GOV. In the “Search Public Form” field, enter “SFO 1.1, click “EPA Miscellaneous Payments - Cincinnati Finance Center” and complete the “SFO Form Number 1.1.” Within twenty-four hours of payment,

Respondent shall fax a copy of the online payment receipt to Jacqueline Robles Werner at 202-564-0069.

34. Separate and apart from this EPA penalty, Customs may require payment of a forfeiture remission amount and/or storage charges for the release of the goods from seizure.

Notice

35. A copy of all correspondence and certifications to EPA concerning this Agreement shall be sent to:

(Regular Mail)

Jacqueline Robles Werner
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7261

(Courier Service)

Jacqueline Robles Werner
U.S. EPA
Ariel Rios South, Room 1109B
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7261

Root Cause Analysis and Corrective Action Compliance Plan

36. A root cause analysis and/or corrective action compliance plan are not applicable in this matter because Respondent has provided a letter, attached herein as Appendix 3, indicating that it will no longer import stand alone engines or engine equipped generators into the United States.

General Provisions

37. This Agreement becomes effective upon the date executed by EPA (“effective date of the Agreement”), at which time a copy will be returned to Respondent.
38. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Respondent to comply with the terms of this Agreement, EPA may refer this matter to the United States Attorney General for collection pursuant to Section

205(d) of the Act, 42 U.S.C. § 7524(d), commence an action to enforce this Agreement or to recover the civil penalty pursuant to Section 205 of the Act, or pursue any other remedies available to it. Respondent expressly waives its right to assert that such engines are certified or exempt from the certification requirements, or that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

39. The parties represent that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so on behalf of Respondent and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.
40. Respondent waives its rights, if any, to a hearing, trial or any other proceeding on any issue of fact or law relating to the matters consented to herein.
41. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.
42. This Settlement is contingent upon the truthfulness, accuracy and completeness of Respondent's disclosures and representations to EPA under this Agreement, including, but not limited to, representations regarding nonroad equipment imported by Respondent and listed in Appendices 1 & 2, and the prompt and complete remediation of any violations in accordance with this Agreement.
43. Hardware has demonstrated a financial inability to pay a penalty greater than the amount provided in the Agreement.

Stipulated Penalties:

44. Respondent shall pay stipulated penalties to the United States for failure to comply with the terms of this Agreement as follows:

- a. For failure to export the 14 uncertified Subject Engines listed in Table 1 of Appendix 1, pursuant to Paragraph 28, \$300 per day;
- b. For failure to export the uncertified Subject Engines listed in Table 2 of Appendix 1, pursuant to Paragraph 29, \$300 per day;
- c. For failure to provide proof of exportation of the uncertified Subject Engines listed in Tables 1 & 2 of Appendix 1, pursuant to Paragraph 30, \$300 per day;
- d. For failure to pay the penalty as required by Paragraphs 32 & 33, \$500 per day;

45. All stipulated penalties under Paragraph 44 of this Agreement shall begin to accrue on the day after performance is due, and shall continue to accrue until the day compliance is achieved. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Agreement. All stipulated penalties shall be paid by Certified check or cashier's check payable to the "United States of America," and mailed via United States Postal Service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: AED/MSEB # 7261

Simultaneously, a photocopy of the check shall be mailed to Jacqueline Robles Werner, Esq., at the address specified in Paragraph 34 or sent via telefax to (202) 564-0069. Such check shall be identified with the case number and Respondent's name. Stipulated

penalties shall be paid within ten business days of written demand by EPA. Stipulated penalties shall not be construed as prohibiting, altering, or in any way limiting the ability of EPA from seeking any other remedy or sanction available by virtue of Respondent's violation of this Agreement or of the statutes or regulations upon which the Agreement is based.

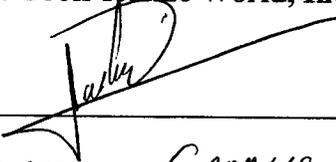
Effect of Agreement

46. Upon completion of the terms of this Agreement, the alleged violations described in this Agreement shall be deemed terminated and resolved. Nothing herein shall limit the right of EPA to proceed against Respondent in the event of default or noncompliance with this Agreement, for violations of Sections 203 or 213 of the Act, 42 U.S.C. §§ 7522 or 7547, which are not the subject matter of this Agreement, for other violations of law, or with respect to other matters not within the scope of the Agreement. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal, or local laws or regulations.

**U.S. Environmental Protection Agency
Settlement Agreement In the Matter of Hardware & Tools for the World, Inc.
AED/MSEB #7261**

The following agrees to the terms of this Agreement:

Hardware & Tools for the World, Inc.

By:  _____ Date 11/28/07

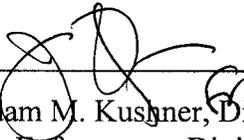
Type or Printed Name: Georges Atouan

Type of Printed Title: President

**U.S. Environmental Protection Agency
Settlement Agreement In the Matter of Hardware & Tools for the World, Inc.
AED/MSEB # 7261**

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By:  _____

Adam M. Kusyner, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

Date: DEC 19, 2007

**U.S. Environmental Protection Agency
Settlement Agreement In the Matter of Hardware & Tools for the World, Inc.
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APPENDIX 1

Table 1: Subject Engines Currently Located at Hardware's Warehouse

No.	Entry Date	Equipment Type	Engine Serial No.	Hp	Engine Build Date	Fuel	Certified?	Labeled?	Qty.
1.	07/07/05	engine	50200001	9.0	1997	gasoline	No	No	1
2.	07/07/05	engine	30307002	9.0	1997	gasoline	No	No	1
3.	07/07/05	engine	3/0407010	13.0	1997	gasoline	No	No	1
4.	07/07/05	water pump engine	05050977	5.5	1997	gasoline	No	No	1
5.	07/07/05	water pump engine	0504225	3.35	1997	gasoline	No	No	1
6.	07/07/05	water pump engine	5050057	9.0	1997	gasoline	No	No	1
7.	01/07/05	generator engine	G-0503004	5.5	1997	gasoline	No	No	1
8.	01/07/05	generator engine	2091006	2.0	1997	gasoline	No	No	1
9.	01/07/05	generator engine	111008	2.4	1997	gasoline	No	No	1
10.	07/07/05	generator engine	50100414	5.5	1997	gasoline	No	No	1
11.	07/07/05	water pump engine	5050944	5.5	1997	gasoline	No	No	1
12.	07/07/05	generator engine	50100095	13.0	1997	gasoline	No	No	1
13.	07/07/05	stationary generator engine	4110057	118	2004	diesel	No	No	1
14.	07/07/05	stationary generator engine	5031807	73.7	2005	diesel	No	No	1

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APPENDIX 1

Table 2: Subject Engines Imported and Currently Seized by Customs

Qty	Entry Date	Entry No.	Equipment Type	Generator Model No.	Engine Manufacturer	Eng.Hp	Engine Build Date	Fuel	Labeled?
520	08/01/05	020-03109580	generator engines	WA2800	Zhejiang Wanhao Machine Science & Technology Co., Ltd.	5.5	2005	gasoline	No
18	12/06/05	020-03113566	generator engines	KDA12STAFO	Wuxi Kipor	9.5 Kva	2005	diesel	No
20	12/06/05	020-03113566	generator engines	KDA19STAO	Wuxi Rami Power Co., Ltd.	16.7 Kva	2005	diesel	No
132	12/19/05	020-03113491	generator engines	KDE6500T	Kipor Power America	10	2005	diesel	No

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APPENDIX 2

Previously Imported Uncertified Subject Engines

No.	Entry Date	Entry No.	Violation	# Violating Engines	# Gasoline & # Diesel	In Third Party Hands?
1.	10/17/2003	072-00486830	Uncertified	94	11 Diesel 83 Gasoline	Yes
2.	10/12/2004	020-03096381	Uncertified	268	90 Diesel 178 Gasoline	Yes
3.	1/3/2005	unknown	Uncertified	19	19 Diesel 0 Gasoline	Yes
4.	2/17/2005	M21-07303713	Uncertified	90	0 Diesel 90 Gasoline	Yes
5.	3/30/2005	020-0310367-4	Uncertified	121	120 Diesel 1 Gasoline	Yes
6.	4/25/2005	020-0310503-4	Uncertified	144	144 Diesel 0 Gasoline	Yes
7.	5/13/2005	020-0310525-7	Uncertified	22	22 Diesel 0 Gasoline	Yes
8.	6/6/2005	unknown	Uncertified	40	0 Diesel 40 Gasoline	Yes
9.	6/15/2005	020-0310743-6	Uncertified	116	116 Diesel 0 Gasoline	Yes
10.	7/11/2005	unknown	Uncertified	159	159 Diesel 0 Gasoline	Yes
11.	7/18/2005	020-0310897-0	Uncertified	120	120 Diesel 0 Gasoline	Yes
12.	11/14/2005	020-0311265-9	Uncertified	790	0 Diesel 790 Gasoline	Yes
			Total:	1,983	801 Diesels 1182 Gasoline	